

STATE OF MICHIGAN  
COURT OF APPEALS

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KING OF THE WIND FARMS, INC,  
  
Plaintiff-Appellant,

UNPUBLISHED  
December 29, 2005

v

MICHIGAN COMMISSION OF AGRICULTURE  
and MICHIGAN DEPARTMENT OF  
AGRICULTURE,

No. 257097  
Ingham Circuit Court  
LC No. 03-002015-AW

Defendants-Appellees.

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Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

In this action seeking mandamus and declaratory relief, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm.

I. Basic Facts and Procedural History

Plaintiff occupies a three-hundred acre parcel of agriculturally zoned land in Macomb Township. Since 1991, plaintiff has been involved in protracted litigation with the township regarding odors emanating from composting operations conducted on the land. As required by the Michigan Right to Farm Act (RTFA), MCL 286.471 *et seq.*, defendant Michigan Department of Agriculture (MDA) investigated the township's complaints regarding odor, then worked with plaintiff and its operators in an effort to obtain conformance with "generally accepted agricultural and management practices" (GAAMPs) applicable to composting operations.<sup>1</sup> MCL 286.474; see also MCL 286.472(d) and MCL 286.473. When these efforts toward GAAMP conformance failed, the MDA transferred investigation of the matter to the Michigan Department of Environment Quality (MDEQ). Plaintiff subsequently petitioned the MDA for reassessment of its operations for GAAMP conformance. However, citing an interagency memorandum of understanding entered into by the MDA and the MDEQ, the MDA declined to further review plaintiff's composting operations. Plaintiff thereafter filed the instant suit challenging

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<sup>1</sup> Whether a farm operation conforms to GAAMPs is decided according to policies adopted by defendant Michigan commission of agriculture. See MCL 286.472(d).

defendants' authority to transfer oversight of its composting operation to the MDEQ, and requesting that defendants be ordered to reassess whether plaintiff's composting operation conforms with applicable GAAMPs.

Defendants moved for summary disposition, arguing that because it had no legal duty to reassess plaintiff's operation for GAAMP conformance, plaintiff's complaint for mandamus and declaratory relief must be dismissed. The trial court found that although the RTFA provides the MDA with exclusive authority to determine whether a farm operation conforms with applicable GAAMPs, see MCL 286.474, a farm operation found by the MDA not to conform with GAAMPs may be referred to the MDEQ for enforcement of any applicable environmental statutes or regulations. The trial court further found that neither the RTFA nor the interagency memorandum regarding environmental regulation of farming operations require that the MDA continue to work with a farming operation towards GAAMP conformance once the matter has been referred to the MDEQ. Thus, the court held, there being no legal duty on the part of defendants to reassess plaintiff's operations, summary disposition of plaintiff's complaint for mandamus and declaratory relief in favor of defendants was proper.

## II. Analysis

"A writ of mandamus will only be issued if the plaintiffs prove they have a 'clear legal right to performance of the specific duty sought to be compelled' and that the defendant has a 'clear legal duty to perform such act . . .'" *In re MCI Telecom Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999), quoting *Toan v McGinn*, 271 Mich 28, 34; 260 NW 108 (1935). Plaintiff argues that, under the RTFA, it has a clear legal right to have its composting operation inspected by the MDA for conformance with GAAMPs, which the MDA has a clear legal duty to perform. "Whether the defendant had a clear legal duty to perform and whether the plaintiff had a clear legal right to the performance of that duty are questions of law that we review de novo." *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 491-492; 688 NW2d 538 (2004).

The RTFA prohibits nuisance litigation against farms and farm operations that conform to generally accepted agricultural practices. MCL 286.473; *Steffens v Keeler*, 200 Mich App 179, 181; 503 NW2d 675 (1993). Specifically, the RTFA provides that "[a] farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture." MCL 286.473(1). However, because the purpose of the RTFA is to protect farmers from nuisance suits, see *Travis v Preston (On Rehearing)*, 249 Mich App 338, 342; 643 NW2d 235 (2002), and not to render farm operations wholly exempt from environmental constraints, the Legislature has provided that where a complaint against a farm operation involves a potential violation of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.*, investigation of the matter must be conducted in accordance with an interagency memorandum of understanding entered into by the MDA and the MDEQ.<sup>2</sup> See MCL 286.474(2). Under the terms of this

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<sup>2</sup> Pursuant to Part 55 of the NREPA, odors "that interfere with the enjoyment of life or property  
(continued...)"

memorandum, and “for the purpose of protecting the air, water, and natural resources of the State from pollution, impairment, or destruction while maintaining a viable farm industry,” these agencies have agreed that the MDA will first investigate an environmental complaint against a farm operation “to determine if [the] farm operation is operating in conformance with [GAAMPs].” See Memorandum of Understanding, Paragraphs 1.b. and 2.e. If the MDA determines that the operation in question does not conform with applicable GAAMPs, the MDA must “attempt to bring the operation into conformance” with those GAAMPs within a reasonable length of time. *Id.* at Paragraph 1.b. If the activity resulting in the complaint is not terminated, or an agreement for conformance with the applicable GAAMPs is not obtained from the operator within 120 days of receiving the complaint, the MDA must refer the operation to the MDEQ. See *id.* at Paragraphs 1.b. and 1.d. Pursuant to the interagency memorandum, it thereafter becomes the responsibility of the MDEQ to investigate and seek compliance of the farm operation in accordance with applicable environmental statutes and regulations, rather than the GAAMPs developed by the Michigan commission of agriculture. *Id.* at Paragraph 1.f. and 1.g.

Here, plaintiff does not allege that the MDA’s efforts toward obtaining GAAMP conformance were in any manner insufficient to meet the requirements of the RTFA or the interagency memorandum. Thus, we find that the MDA’s transfer of operational oversight to the MDEQ pursuant to the procedures outlined in the memorandum to be proper. We further find that, although the interagency memorandum provides that the MDA is to provide technical assistance to the MDEQ in its investigation, see *id.* at paragraph 1.g., neither the memorandum nor the RTFA require, even implicitly, that the MDA is obligated to continue the GAAMP conformance process once the matter has been referred to the MDEQ for environmental regulation compliance. Rather, the memorandum expressly provides that once an “operation is referred to [the MDEQ] for follow-up action, [the MDEQ] will enforce the . . . appropriate environmental statutes and the rules promulgated under those statutes, and not the practices adopted by the [Michigan commission of agriculture].” *Id.* at paragraph 1.f. (emphasis in original).

Consequently, because neither the RTFA nor the interagency memorandum of understanding set forth a clear legal duty on the part of the MDA to reassess GAAMP conformance after investigation of a complaint has been properly transferred to the MDEQ, mandamus will not lie. *In re MCI Telecom Complaint, supra.* The trial court did not, therefore, err in granting summary disposition of plaintiff’s suit in favor of defendants.<sup>3</sup>

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(...continued)

in this state” constitute “air pollution,” the jurisdiction of which to regulate has been granted the MDEQ. MCL 324.5501(a) and (b); see also MCL 324.5503.

<sup>3</sup> Because defendants did not have a clear legal duty to reassess plaintiff’s operations for GAAMP compliance, the trial court’s grant of summary disposition of plaintiff’s claim for declaratory relief was also proper. See *Casco Twp v Secretary of State*, 261 Mich App 386, 395; 682 NW2d 546 (2004).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Alton T. Davis